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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE RICHARD AARON, Defendant and Appellant.	F068256 (Super. Ct. No. BF146039A) **OPINION**

APPEAL from a judgment of the Superior Court of Kern County. Thomas S. Clark, Judge.

James F. Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Michael P. Farrell, Assistant Attorney General, Robert Gezi and Julie A. Hokans, Deputy Attorneys General, for Plaintiff and Respondent.

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Lawrence Richard Aaron was convicted of burglarizing a rental unit at a storage facility and the storage facility's office. He argues that his convictions rest solely on the

testimony of an accomplice, without any corroborating evidence, in violation of Penal Code section 1111. He also argues that his motion for acquittal should have been granted and that the convictions were not supported by sufficient evidence. We disagree and will affirm.

FACTS AND PROCEDURAL HISTORY

The district attorney filed an information charging Aaron and a codefendant, Karen Kay Frye, with two counts each of second degree burglary. (Pen. Code,[1] § 460, subd. (b).) Count 1 charged Aaron and Frye with burglarizing property of Diane Manzano, and count 2 charged them with burglarizing property of a company called Extra Space Storage.

Frye pleaded guilty with the understanding that she would receive a sentence of 16 months, which would resolve both the current charges and a violation of probation in a prior case. She was not offered leniency in exchange for her testimony.

Kirk Denison, manager of the Extra Space Storage facility at 4600 Buck Owens Boulevard in Bakersfield, testified at trial. Denison lived in a mobile home at the facility. Around 8:30 p.m. on September 19, 2012, a police officer came to the door of Denison's mobile home and informed him that the office of the facility had been broken into. The glass door of the office had been shattered and a computer was missing. No money had been taken from the cash register. The following day, Denison walked the grounds and saw a padlock lying on the ground near unit C-41. The lock had been cut. The door of the unit was closed but unlocked and the latch had been disturbed. Denison called the renter of unit C-41, Diane Manzano, and she came to the facility. Manzano saw that the items inside the unit were scattered, and some books and other items were missing. A later inventory showed that clothing, dishes, cookware, a glass decanter, and an inflatable bounce house were missing in addition to the books.

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[1]Subsequent statutory references are to the Penal Code unless otherwise noted.

Denison reviewed the facility's surveillance video from the evening of September 19, 2012. He placed segments of the video on a compact disc and gave it to the police. The video was played for the jury as Denison described what it showed.

The video showed that at 6:17 p.m. a car Denison recognized as belonging to Frye entered the front gate of the facility. Frye was a customer who rented two storage units at the facility. Following close behind Frye's car, an SUV also entered. Denison explained that the driver of the car must have entered a code on the keypad at the gate to make the gate open; then the SUV driver followed closely in order to get through before the gate closed again.

Another clip showed Frye's car exiting the gate at 7:01 p.m. The car then parked beside the manager's mobile home on the outside of the gate. At 7:14 p.m., the inside of the gate was illuminated by lights. A man in a white t-shirt, jeans, and a baseball cap walked into the frame. He stood at the gate a moment, facing toward Frye's car. Then he walked out of the frame and the gate opened. The SUV drove into the frame and through the gate. Frye's car pulled out of its parking space and the two vehicles left the facility together.

A third clip showed what was happening inside the facility while Frye's car was waiting outside. At 7:03 p.m., a person in a white shirt and dark pants stood for a moment in front of a closed rental unit. An SUV was parked a few units away. Denison testified that the person was standing at Manzano's unit, C-41, and the SUV was parked beside Frye's units, C-49 and C-50. The person opened the door of unit C-41 and went inside. He took some objects out of the unit and carried them to the SUV. Then he backed the SUV up, parked it beside unit C-41, went back inside the unit, and brought more items out to the SUV. At 7:13 p.m., he closed the door of the unit, got into the SUV, and drove away.

A fourth clip showed Frye's car returning to the storage facility at 7:29 p.m. A person in a white shirt and dark pants got out of the passenger side and walked toward the

office. The car parked beside the manager's mobile home. After about 40 seconds, the person in the white shirt returned and got back in. The car drove away.

Finally, a clip showed the inside of the facility's office. At 7:29 p.m., as the clip begins, the screen is dark; then beams of light shone briefly through the glass door before angling away. At 7:30 p.m., a figure appeared outside the glass door and the glass shattered. The figure entered and disappeared into the darkness inside the office. Within a minute, the figure reappeared and exited through the door.

Denison recognized Frye when she got out of her car in one of the video clips. A few days later, he confronted her. Frye told him the person with her was Aaron. Denison gave this information to the police.

Detective Todd Dickson testified that he spoke to Frye and Frye told him where Aaron lived. Dickson went to Aaron's address and saw an SUV. He checked the license plate against a Department of Motor Vehicles database and found that the SUV was registered to Aaron. The jury was shown a photo of a dark green Mitsubishi Montero SUV (a generic photo, not a photo of Aaron's car). Dickson said yes when asked whether it was "consistent with the type of vehicle" he saw at Aaron's house. The jury also saw still photos taken from the surveillance video showing a dark-colored SUV entering and exiting the storage facility through the gate. The jury saw another still photo, taken from the clip showing the break-in of unit C-41. In the photo, the rear of an SUV can be seen parked near a person opening the door of the unit.

The jury was shown a still photo taken from the surveillance video showing the man in the white t-shirt, jeans, and baseball cap. This photo is from the portion of the video in which the SUV approached the gate, the man got out and stood by the gate facing Frye's car, and then went back to the SUV and drove away when the gate opened. Dickson testified that he thought Aaron was the man in the photo. The photo does not show the man's face clearly, and the court sustained an objection that Dickson's identification was speculative. The prosecutor then asked Dickson how he was able to

determine whom the picture depicted. Dickson said Frye told him Aaron was the man who accompanied her at the storage facility. Dickson found a picture of Aaron in a mug shot database. Comparing the mug shot with the picture from the surveillance video, Dickson concluded that the man in the video was Aaron.

Frye testified for the prosecution. She said she was testifying because, although Aaron wanted her "to take the fall" for him, she was unwilling to do so. She believed she had done nothing wrong and should not "have had to plead guilty." Frye had known Aaron for a couple of years at the time of trial. She had been renting two units at the storage facility. On the evening of the burglary, Frye and Aaron drove into the facility. Frye identified her car and Aaron's SUV entering, as shown in the surveillance video. They drove to Frye's units, where Aaron was going to buy some antique furniture from her. Aaron was drunk. He saw some bolt cutters hanging on the wall of one of Frye's units. He took the bolt cutters and went to cut a lock on an adjacent unit. Frye told Aaron not to do anything stupid, and also pointed out that the lock he was going to cut was on her other unit. Aaron said, "[O]h, my bad," and went to a different unit. Frye said, "[Y]ou can't do that, I got my stuff here, you're gonna get me in trouble." She told him to stop because it was stupid and there were cameras. Then Frye drove away, planning to tell the manager what was happening. The manager, Denison, was Frye's friend. He was not home, however.

While Frye was parked at the manager's mobile home, Aaron drove up to the gate. His SUV had been empty when they arrived, but now it was "full of stuff." Aaron got out of the SUV and yelled at Frye to let him out, since he did not know the code.

Frye came back to the facility later that evening, with Aaron in her car. She thought he was going to get a soda from the soda machine outside the office, and was surprised and frightened when instead he broke into the office. She was going to drive away, but he came back and pounded on the hood and told her to stop, so she let him get back in. She asked him if he was out of his mind. Aaron explained that he had stolen

part of the surveillance system so they would not be caught. He had "a little box in his hand," "a computer or something," and he "thought it was the cameras so that way there would be no problem." He also told Frye to keep her mouth shut if she knew what was good for her. A week before trial, in the courthouse, Aaron told Frye, "[Y]ou're dead, bitch."

The defense presented two alibi witnesses. The first, Noel Carter, testified that Aaron had been his employee. Carter had a real estate and property management business. On the day of the burglary, Aaron was working for Carter on demolishing a shed and a patio. Carter picked Aaron up at 2:30 p.m. and drove him to the job site. They worked until 7:30 p.m., when Carter drove Aaron home. He dropped Aaron off at Aaron's home around 7:45 p.m. Aaron's clothes were dirty from the work.

The other alibi witness was Ashley Aaron, Aaron's daughter. She remembered the evening of September 19, 2012, because it was the day a friend of hers had a birthday party. She was living with her grandmother, her daughter, and her father at her grandmother's house at the time. She came home from the friend's party around 6:30 or 7:00 p.m. Around 7:00 p.m., a short time after she arrived, her father arrived home. His clothes were dirty, as if he had just come from working. They ate dinner and Aaron read a book to Ashley's daughter. Aaron was finished with the reading at around 8:30 p.m. He went to his room. Ashley went to bed around 11:15 p.m. She did not see Aaron leave the house that night. If he had left, she would have seen him.

The jury found Aaron guilty as charged. The court imposed a sentence of three years on count 1. On count 2, the court imposed a consecutive sentence of eight months. The first two years of the sentence were to be served in custody in county jail and the remainder under mandatory supervision.

DISCUSSION

I. Corroboration of accomplice testimony

The trial court instructed the jury that, as a matter of law, Frye was an accomplice to the charged crimes if they were committed. Then it instructed the jury in accordance with CALCRIM No. 335, as follows:

> "You may not convict the defendant of burglary … in the two counts based on the statement or testimony of an accomplice alone. You may use the statement or testimony of an accomplice to convict the defendant only if:
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> "One, the accomplice's statement or testimony is supported by other evidence that you believe; two, that supporting evidence is independent of the accomplice's statement or testimony; and three, that supporting evidence tends to connect the defendant to the commission of the crimes.
>
> "Supporting evidence, however, may be slight. It does not need to be enough by itself to prove that the defendant is guilty of the charged crime, and it does not need to support every fact about which the witness testified. On the other hand, it is not enough if the supporting evidence merely shows that a crime was committed or the circumstances of its commission. The supporting evidence must tend to connect the defendant to the commission of the crime.
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> "Any statement or testimony of an accomplice that tends to incriminate the defendant should be viewed with caution. You may not, however, arbitrarily disregard it. You should give that statement or testimony the weight you think it deserves after examining it with care and caution and in the light of all the other evidence."

This instruction was given to comply with section 1111, which provides:

> "A conviction [cannot] be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.
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> "An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given."

The substance of section 1111 has long been the law because of the dangers generally associated with accomplice testimony. "[I]t was, of course, recognized that evidence of an accomplice, coming from a tainted source, the witness being … a man usually testifying in the hope of favor or the expectation of immunity, was not entitled to the same consideration as the evidence of a clean man, free from infamy." (*People v. Coffey* (1911) 161 Cal. 433, 438.)

Aaron argues that evidence sufficient to corroborate Frye's testimony against him was not presented at trial. We disagree.

The corroborating evidence required by section 1111 may be slight and entirely circumstantial and may be entitled to little weight standing alone. It need not corroborate every fact to which the accomplice testified or establish all the elements of the offense. It must, however, tend to implicate the defendant in some degree and relate to some fact which is an element of the crime. It also must be independent of—and require no interpretation or direction from—the statements of the accomplice. (*People v. Hayes* (1999) 21 Cal.4th 1211, 1271; *People v. Szeto* (1981) 29 Cal.3d 20, 27.) We cannot disturb the jury's finding on the issue unless the corroborating evidence should not have been admitted or did not reasonably tend to connect the defendant with the commission of the crime. (*People v. Szeto, supra*, at p. 27.)

In this case, the jury saw video and still photographs of the SUV used by the burglar. It also saw a photograph of an SUV of the same model as the SUV registered to Aaron. The jury could compare the two and find that a car of the same model as Aaron's was used by the burglar. The jury also saw video and a still photograph showing the burglar, including a somewhat-distant and indistinct image of his face. The jury could compare these pictures with Aaron himself as he sat in the courtroom, and with the mug shot that was introduced into evidence, and could conclude that the burglar was a man who looked like Aaron. Having watched the video and having reviewed the rest of the

record, we conclude that the corroboration of Frye's statements accusing Aaron was sufficient under the "slight evidence" standard.

Aaron argues that the corroborating evidence was not independent of Frye's statements. His position seems to be that, because Frye's statements to Officer Dickson were what prompted Dickson to go to Aaron's house, view Aaron's car, and look Aaron up on the mug shot database, the appearances of Aaron and his car are not independent corroboration when compared with the images in the surveillance video. This is not correct. The jury could have compared the video images of the burglar and the burglar's car with Aaron himself and with the stock picture of a Mitsubishi Montero (knowing that Aaron owned one), and could have made the necessary corroboration finding based on these comparisons, even if it had not heard Dickson testify that Frye's statements had led him to Aaron and Aaron's car. (The video was authenticated by Denison and did not depend in any way on statements by Frye.) The independent-corroboration requirement of section 1111 is not similar to the fruit-of-the-poisonous-tree doctrine familiar from the Fourth Amendment context: It does not matter for purposes of section 1111 that the police relied on information from the accomplice to track down the defendant. Instead, the question is whether the corroborating evidence is logically independent of the accomplice's statements. In this case, it was.

Aaron suggests the testimony of Dickson cannot be considered as independent corroboration because Dickson, in his identification of Aaron as the person in the video, must have been influenced by Frye's prior identification of Aaron as her coperpetrator. As what we have already said indicates, the jury did not need to rely on Dickson's identification; it could compare Aaron with the video and still photos from the video for itself.

For these reasons, we conclude that the jury was presented with some evidence independent of Frye's statements that had a tendency to connect Aaron with the commission of the two burglaries.

II. Motion for acquittal

At the close of the prosecution's case-in-chief, Aaron made a section 1118.1 motion for acquittal. The motion was based on the contention that the prosecution's evidence was insufficient to prove guilt. The motion was denied.

Aaron now argues that the motion should have been granted because Frye's statements against him were not sufficiently corroborated under section 1111. We reject this argument for the reasons stated above.

III. Sufficiency of the evidence

Aaron argues that the evidence presented at trial was insufficient to prove guilt. When considering a challenge to the sufficiency of the evidence to support a judgment, we review the record in the light most favorable to the judgment and decide whether it contains substantial evidence from which the finder of fact could make the necessary finding beyond a reasonable doubt. We presume every inference in support of the judgment that the finder of fact could reasonably have made. We do not reweigh the evidence or reevaluate witness credibility. We cannot reverse the judgment merely because the evidence could be reconciled with a contrary finding. (*People v. D'Arcy* (2010) 48 Cal.4th 257, 293.)

Aaron contends that the evidence was insufficient because Frye's statements against him were not sufficiently corroborated under section 1111. We have already rejected this argument.

Aaron also contends that the testimony of his alibi witnesses, especially his employer, should have been accepted. The weight and credibility of evidence is a matter for the jury, however; we cannot reverse a judgment based on a contention that some witnesses should have been believed and others disbelieved.

For these reasons, Aaron's argument lacks merit.

DISPOSITION

The judgment is affirmed.

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Smith, J.

WE CONCUR:

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Hill, P.J.

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Kane, J.